Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

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STANLEY HUNKINS, individually
and d/b/a Muse Ten Center, et al.,

Petitioners,

vs.

CITY OF MINNEAPOLIS,
THE MINNEAPOLIS COMMUNITY DEVLOPMENT
AGENCY, and MINNESOTA TECHNOLOGY
CORRIDOR CORPORATION,

Respondents.

==========

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

==========

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QUESTIONS PRESENTED FOR REVIEW

I: Where the City of Minneapolis and the Minneapolis Community Development Agency and the Minnesota Technology Corridor Corporation had associated together to down-zone an area to benefit their own joint enterprise, whether the marked diminution in value of the property value of the Muse Ten Center on account of the down-zoning constitutes a compensable taking of private property under the Constitution of the United States and its jurisprudence?

II: Whether a political entity must inform a property-holder of the process necessary to obtain a variance where the political entity downzones property?

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Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

Pratt v. State Department of Natural Resources, 309 N.W.2d 767 (Minn. 1981).

United States Constitution, 5th Amendment

OPINIONS BELOW

This Petition seeks review of the Order of the Supreme Court of the State of Minnesota declining review, Hunkins et al. v. City Minneapolis et al., CX-93-1009, and the reported underlying Minnesota Court of Appeals' decision, Stanley Hunkins, individually and d/b/a Muse Ten Center et al. v. City Minneapolis, The Minneapolis Community Development Agency, and Minnesota Technology Corridor Corporation, 508 N.W.2d 542 (Minn. Ct. App 1993). Each of these decisions has been reprinted in the Appendix.

STATEMENT OF JURISDICTION

Petitioner Stanley Hunkins and Corridor Properties seek review of the decision of the Minnesota Court of Appeals, filed November 23, 1993, and the denial of review by the Supreme Court of the State of Minnesota, January 27, 1994. This Supreme Court of the United States has jurisdiction based on 28 U.S.C, Section 1257.

STATEMENT OF THE CASE

This case first came to the Minnesota Court of Appeals from

the district court's grant of summary judgment based on Stanley Hunkins' failure to obtain a final determination by the zoning board for the City of Minneapolis. The Court of Appeals held Hunkins could not demonstrate that the zoning regulation would have an economic impact on his property. Hunkins et al. v. City of Minneapolis et al., 508 N.W.2d 542 (Minn. Ct. App. 1993).

The Minnesota Supreme Court did not grant the Petition for a Writ of Certiorari brought by Hunkins, Appellate Case No. CX-93-1009.

QUESTIONS PRESENTED FOR REVIEW

I: Where the City of Minneapolis and the Minneapolis Community Development Agency and the Minnesota Technology Corridor Corporation had associated together to down-zone an area to benefit their own joint enterprise, whether the marked diminution in value of the property value of the Muse Ten Center on account of the down-zoning constitutes a compensable taking of private property under the Constitution of the United States and its jurisprudence?

II: Whether a political entity must inform a property-holder of the process necessary to obtain a variance where the political entity downzones property?

STATEMENT OF FACTS

Stanley Hunkins launched his efforts to develop the Muse Ten Center as a business incubator in 1983. Two adjoining parcels

were purchased; and Hunkins received a building permit from the City of Minneapolis. In late 1984, the Muse Ten Center opened, but the rehabbing of the second parcel had not been completed.

Shortly afterwards, the City of Minneapolis applied to the State of Minnesota for an Enterprise Zone status encompassing the area where the Muse Ten Center was situated. In such an Enterprise Zone, government entities work together to develop specified areas.

On December 19, 1986, the Minneapolis City Council enacted Chapters 570, 571, and 572 of the Minneapolis Zoning Code. This zoning created the Minnesota Technology Corridor and severely restricted land use within the Corridor by the creation of districts restricted to technology-intensive uses and commercial uses supportive of technology intensive use.

Stanley Hunkins submitted no formal petition for rezoning; neither did he fill out a "permitted use" application or submit an application for a variance. Hunkins Deposition, pages 49-50; Hamborg Deposition, pages 263-65. However, Hunkins and

Randall Hamborg repeatedly asked the City to reconsider its zoning in the Corridor, before and well after the zoning had been implemented.

A Technology Corridor informational brochure emphasizes that the Corridor is "...a joint effort of City and University..." and that the Corridor

> should have [the] goal of limited 'land bank' to be able to market Corridor property as available and to be able to respond quickly. To facilitate this goal and improve financial feasibility, [the Corridor] should stay aware of real estate that is available and try to acquire available property for land bank rather than using condemnation.

On November 20, 1985, Charles Arnason of the MTCC distributed a Memorandum on Land/Use Development Control:

> It is highly desirable and, in fact, may be described as imperative, that some type of control be imposed on the real estate located in the Minnesota Technology Corridor. As development occurs, current owners, as well as speculators, will seek to profit from the increased valuation of the real estate, made so by the enhancement of the Project and the neighborhood. Set forth herein are alternatives to be considered:
>
> 1. City of Minneapolis zoning. . . .
>
> * * *
>
> 6. Involuntary control of the premises-condemnation.... It is acknowledged that condemnation is the least desirable method of acquisition....

The City of Minneapolis approved a 12-month and then an additional 6-month building moratorium in the Technology Corridor from early 1986 through mid-1987.

A June 1986 newsletter published by the MCDA described the Technology Corridor as "a joint venture by the City of Minneapolis, the State of Minnesota, the University of Minnesota and private businesses."

The Secor Study, study sponsored by the MCDA and the MTCC to assist the development of a Technology Corridor, recommended that the City zone the Corridor restrictively to impede development so that the land would inexorably revert to ownership by the City of Minneapolis because the property could not cash flow in its current private hands. The Secor Study also indicated that the Technology Corridor had to compete with cheap land in outlying areas. Id. at 64. A-111.

> Zoning an area as District T will have the effect of putting it under the effective control of the City of Minneapolis. Given the competition from industrial parks in suburban areas, the value of the land zoned District T will be much lower than the land elsewhere at the fringe of the [Central Business District]. Thus all of the land zoned District T will fall under the

effective planning authority of the MCDA.

Zoning fashioned to depress land values is known as "downzoning."

The Secor Study anticipated the MCDA's and the City's "effective control" of the Technology Corridor, that is, the City and its partners would ultimately enjoy the advantages of owning most of the property in the Corridor but without having paid any of the interim costs of ownership, including, at a minimum, purchase costs, paying taxes, maintenance expenses.

In March 1987, the Minneapolis City Council adopted the objectives set forth in the Secor Study.

On July 24, 1987, Hunkins' lender, United Federal Savings Bank, withdrew its financing from the Muse Ten Center in large part on account of the zoning:

> Despite the fine quality of your existing project we have several concerns that I believe would operate causing [the Bank] to decline further [loan] renewal requests:
>
> 1. The project will not make economic sense and will not cash flow until the 240 building is rehabbed and leased. . . .
> 2. From the standpoint of a mortgagee, the proposed zoning changes to Hi-Tech Use are negative. Such

> restrictions would decrease the flexibility of use for the building and ultimately decrease its market value as a result. If we ever had to foreclose on the property we would not want to be bound by such restrictions. . . .

Exhibit V2, A-120.

Hunkins had already put in excess of $6,000,000, into the Muse Ten Center. His losses were more than four million dollars at the time of his sale to Randall Hamborg.

Herb Johnson, an official with the Minnesota Technology Corridor Corporation, continued his acknowledged designs to havethe Muse Ten Center owned by that entity: "[Taking over the MuseTen building] would cost the County nothing and would bring in increasing property taxes over time. Not a bad deal, I would say."

The Liquor Depot, across the street from the Muse Ten Center, asked for a change in zoning which was rebuffed:

> "...The Board of Directors of the Minnesota Technology Corridor Corporation hereby opposes any change in the current zoning in the Technology Corridor as detrimental to the future development and the maintenance of the integrity of the corridor concept...."

In a 1991 status report, Johnson admitted that significant

firms were leaving the Corridor and the opportunities were being "snapped up" by the University:

> I am happy to report that the MCDA is purchasing the [Chicago & Northwestern Railroad] property for future development (at a fraction of their initial asking price of $15 per square foot). This will facilitate the River Road and offer some excellent development opportunities for the "right" kind of companies. I see the recent leavings as opportunities to provide low-cost space to the "right" kind of companies. MCDA will assist by listing them but not in actively marketing them.

City employees, including Nordrum, conceded that the Technology Corridor downzoning would "be a disaster to anyone that owned property [there]...."

Stanley Hankins and Randall Hamborg forfeited their property rights in the Muse Ten Center when the property taxes could not be paid. The Muse Ten Center, as planned, came to the City of Minneapolis, the MCDA, the Minneapolis Technology Corridor Corporation, and the University of Minnesota.

ARGUMENT

I: Where the City of Minneapolis, the Minneapolis Community Development Agency, and the University of Minnesota had acted in concert as the Minnesota Technology

Corridor Corporation to down-zone an area to benefit their own joint enterprise, whether the marked diminution in value of the property value of the Muse Ten Center on account of the down-zoning constitutes a compensable taking of private property under the Constitution of the United States and its jurisprudence?

The Minnesota Supreme Court itself has described various situations where zoning ordinances are presumptively invalid:

> Municipal zoning ordinances affecting interests in real property are authorized only by virtue of an exercise of the police power of a municipality, and must be in the interests of public health, safety, or welfare. [Citations omitted.] They are invalid...where it is established that they are discriminatory as applied to a particular situation. [Citations omitted.] They cannot rest upon an intent to protect enterprises from competition in some particular district; or to create monopolies therein; or to make certain areas subservient to others.

Pearce v. Village of Edina, 118 N.W.2d 659 (Minn. 1962).

Where the entity enacting the zoning restricts development to promote the entity's own venture, then a compensable taking has occurred.

In McShane v. City of Faribault, 292 N.W>2d 253, 258 (Minn. 1980), the Minnesota Supreme Court defined the critical difference between an "arbitration use" and an "enterprise use" in the context of zoning:

> In this case, however, the ordinance was not an "arbitration" of competing land uses but a regulation for the sole benefit of a governmental enterprise—the Faribault Municipal Airport. A number of authors, including Professor Sax, have argued that where a specific governmental enterprise is involved, the burden of its activities falls on just a few individuals while the public as a whole receives the advantage of property right for which it did not pay. In essence, the public has appropriated an easement. In such cases, these writers conclude, the burden on the landowner is grossly disproportionate to the burden he should be expected to bear as an ordinary citizen, and the use of regulation to take his property rights is, in effect, a shortcut to avoid compensation. Therefore, even though the burdened property retains some reasonable usefulness, the public should pay for the diminution in value just as any private landowner must purchase an easement. Sax, **Takings and the Police Power, supra;** Comment, **Airport Approach Zoning: Ad Coelum Rejuvenated,** 12 UCLA L.Rev. 1451 (1965); 1 Rathkopf, **The Law of Zoning & Planning,** & 6.12(1979); 2 Anderson, **American Law of Zoning,** && 12.34, 12.35 (1976); 2 Nichols, **Law of Eminent Domain,** & 6.35 (1979).

McShane also held that the landowner did not have to obtain a variance before bringing suit. McShane at 256.

Most importantly, McShane, op. cit., discusses the distinction between "arbitration" and "enterprise" zoning. As this United States Supreme Court is well aware, this distinction comes from **Penn Central Transportation Co. v. New York City,** 438 U.S. 104 (1978), a Fifth Amendment analysis. The Supreme

Court concluded that a landmark preservation ordinance was not related to a governmental enterprise and therefore did not constitute a taking so long as it permitted some use of the property which would yield a reasonable return on investment. Also, the Court noted the zoning in Penn Central, citing 2 Rathkopf, The Law of Zoning and Planning, 26-4 and 26-4—26-5, n. 6 (2d e. 1977), did not constitute a land use decision that had arbitrarily singled out a particular parcel for different, less favorable treatment than adjoining parcels.

The enterprise test applies when a regulation burdens land owned by a few individuals to benefit a specific governmental enterprise which serves the public. The arbitration test comes into play when no specific government enterprise benefits, and the government simply arbitrates between competing land uses. The facts in Hunkins parallel those in McShane, op. cit., and the Penn Central enterprise test applies. There is no question but that the partners in the Minneapolis Technology Corridor Corporation intended to benefit their own interests rather than those of City of Minneapolis as a whole. No one claimed the Technology Corridor to be an integral part of any comprehensive

zoning plan. The downzoning of the Muse Ten Center aimed to shatter private property values, which under the Penn Central analysis stands as a compensable taking.

In Pratt v. State Department of Natural Resources, 309 N.W.2d 767 (Minn. 1981), the Minnesota Supreme Court also held:

> We think that here, where the governmental enterprise function is **prominent**, a taking may occur if the landowner's property is substantially diminished in value.
>
> * * *
>
> This impairment, if substantial, would disproportionately burden an individual property owner for the benefit of the public in the furtherance, at least in part, of a governmental enterprise.
>
> We therefore hold that the...regulation here at issue, as it has both prominent arbitration and governmental enterprise functions and may unequally and disproportionately affect Pratt's property, may constitute a taking. A taking occurs if there is a substantial diminution in the market value of the property as a result of the regulation.

In the present Hunkins situation, there may a measured arbitration function, where reciprocal benefits and burdens are equitably applied. However, the consumate function of the Technology Corridor zoning relates to the governmental enterprise in developing the Technology Corridor. The taking that Hunkins has suffered is the loss of his purchase price,

development and construction costs, and, finally, loss of the expected appreciation in value of the Muse Ten Center.

The actual system developed by the City of Minneapolis, the Technology Corridor Corporation, and the Minneapolis Community Development Agency had the effect of taking property from Stanley Hunkins for the benefit of others. The United States Supreme Court decried such an effect in Logan v. Zimmerman Brush Co. et al., 455 U.S. 422, 436 (1981):

> Here, in contrast, it is the state system itself that destroys a complainant's property interest, by operation of law...whether the [] action is taken through negligence, maliciousness, or otherwise. ... Logan is challenging not the Commission's error, but the "established state procedure" that destroys his entitlement without according him proper procedural safeguards.

[Emphasis added.]

The City of Minneapolis determined to downzone in order to acquire the property it wanted in the Technology Corridor. One could, with the Secor Study in hand, predict what would happen to Stanley Hunkins. Hunkins' Muse Ten Center land would, under the Technology Corridor's restrictive zoning conditions, fail to cash-flow or fail to attract buyers. Only the short step to

abandoning one's property to the City or the short step to losing the land for failure to pay property taxes remained.

It is clear from the facts presented to the lower Court that the City of Minneapolis, the Minneapolis Community Development Agency, and the Minnesota Technology Corridor, downzoned the Technology Corridor area to achieve their own joint enterprise and to take property, in whole on in part, without payment.

The Minnesota Court of Appeals acknowledged that "[a]t trial and in [the appeal to the Minnesota Court of Appeals], Hunkins correctly argued that, under these facts, the City acted in an enterprise capacity." Appendix at *****. [Emphasis added.] The Minnesota Court of Appeals then stated that this had no bearing.

Such a conclusion cannot be allowed by this United States Supreme Court.

II: Whether a political entity must inform a property-holder of the process necessary to obtain a variance where the political entity downzones property?

Due process demands that a person whose property stands at

risk must be notified by a governmental agency which intends to take the property of the process necessary to obtain administrative relief:

> When a government agency knows that its action will deprive an individual of a property right, the agency must notify that person prior to the deprivation. The notice must include statements "reasonably calculated" to inform the private person of the availability of a process by which he might contest the proposed government action. **See Memphis Light, Gas & Water Division v. Craft,** 436 U.S. 1, 13, 98 S.Ct. 1554, 1562, 56 L.Ed.2d 30 (1978).

Eisen v. State Department of Public Welfare, 352 N.W.2d 731, 736 (Minn. 1984).

Defendants provided no documentation to the District Court indicative of any process available to Hunkins to get a variance. It is apparent that the MCDA, the MTCC, and the City did not, under any circumstances, desire that their zoning be reformed or be questioned.

CONCLUSION

The Minnesota Court of Appeals decision should be reversed on the grounds that the decision in Hunkins et al. v. City of Minneapolis et al. contradicts case law from the United States

Supreme Court and the Minnesota Supreme Court.

The writ for certiorari should issue.

Dated at Minneapolis, Minnesota, this_____day of April, 1994.

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APPENDIX

STATE OF MINNESOTA

IN SUPREME COURT

CX-93-1009

Stanley Hunkins, Individually and
d/b/a Muse Ten Center, et al.,

Appellants,

vs.

City of Minneapolis,

Respondent,

The Minneapolis Community Development
Agency,

Respondent,

Minnesota Technology Corridor Corporation,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Stanley Hunkins for further review
be, and the same is, denied.

DATED: January 27, 1994 BY THE COURT:

STATE OF MINNESOTA
IN COURT OF APPEALS

CX-93-1009

Hennepin County
District Court File No. 9121459

Stanley Hunkins, individually and d/b/a Muse Ten Center, et al., Appellants, vs.	Lawrence H. Crosby Clem & Crosby Suite 130 313 Southeast Fifth Street Minneapolis, MN 55414
City of Minneapolis, Respondent,	Robert J. Alfton Minneapolis City Attorney Michael T. Norton Assistant City Attorney 300 Lincoln Centre 333 South Seventh Street Minneapolis, MN 55402-2453
The Minneapolis Community Development Agency, Respondent,	James R. Dorsey Marc D. Simpson Leonard, Street & Deinard 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402
Minnesota Technology Corridor Corporation, Respondent.	Corey J. Ayling Eileen A. Beckett McGrann, Shea, Franzen, Carnival, Straughn & Lamb, Chartered 2200 LaSalle Plaza 800 LaSalle Avenue Minneapolis, MN 55402

Filed November 23, 1993
Office of Appellate Courts

SYLLABUS

A property owner cannot pursue inverse condemnation without first obtaining final determination of how zoning regulation affects property.

Affirmed.

Considered and decided by Randall, Presiding Judge, Kalitowski, Judge, and Davies, Judge.

OPINION

DAVIES, Judge

In this inverse condemnation action, Stanley Hunkins appeals from the district court's grant of summary judgment to respondents City of Minneapolis, Minneapolis Community Development Agency, and Minnesota Technology Corridor Corporation. The district court found that, because Hunkins had failed to obtain a final determination from the City's zoning board, he could not establish that the zoning regulation would have an economic impact on his property. The court, therefore,

refused to reach the merits of Hunkins, inverse condemnation claim. We affirm.

FACTS

In 1983, Hunkins purchased two parcels of land in the Industry Square Development area of Minneapolis. He contemplated renovating two existing buildings into a "business incubator" office complex where fledgling companies could lease office space and have access to on-site support services. Hunkins called his complex the "Muse Ten."

At the same time, the City commissioned a task force to recommend plans for a comprehensive, revitalization project in the Industry Square area, to be known as the "Technology Corridor." Hunkins' property occupied a portion of the Technology Corridor.

The City did not adopt the task force's recommendation report until February 1985. By that time, the Muse Ten complex had opened its doors. A year later, in response to concerns about protecting the area's development scheme, the City approved a 12-month building permit moratorium so that it

could study possible rezoning. The City later extended the moratorium into mid-1987. The City allowed Hunkins to continue renovation of his property during the moratorium, however, and even issued him a building permit.

Before any rezoning occurred, the City asked the Minnesota Technology Corridor Corporation (MTCC) and Minneapolis Community Development Agency (MCDA) to assist in the development of the Technology Corridor. The MTCC/MCDA's report emerged in December 1986 and proposed using a single developer and recommended rezoning the area.

In December 1986, the City adopted zoning ordinances consistent with the Technology Corridor's zoning requirements, establishing two distinct zones: (1) the "T" zone, allowing technology intensive uses only; and (2) the "TC" zone, allowing commercial uses supportive of technology intensive uses. Hunkins' Muse Ten property fell within the "TC" zone. The City viewed the businesses then operating in the Muse Ten complex as legal nonconforming uses and set up a special procedure for owners of those properties to apply for zoning

determinations.

Before the City enacted the zoning ordinances, Hunkins began experiencing financial difficulties. In April 1987, a judgment for unpaid property taxes was entered against Hunkins. Several months later, Hunkins' lender withdrew its financial backing. Now he claims the lender withdrew in part because of the proposed zoning changes. Although he registered his objections with a variety of city personnel, Hunkins never requested a variance or special use permit from the City. Nor did he ever seek to enjoin the enactment or enforcement of the ordinances.

In April 1991, the Muse Ten property forfeited to the state for nonpayment of 1986 property taxes.

ISSUE

May a district court refuse to decide a property owner's takings claim where the owner has not sought a final determination regarding application of the zoning to the property?

ANALYSIS

On appeal from a summary judgment, this court must determine

(1) whether there are any genuine issues of material fact and

(2) whether the district court erred in its application of the law. Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988). At trial, no one disputed that Hunkins had failed to obtain a final determination as to the effect of the zoning on his property. In finding that Hunkins' inaction was fatal to his takings claim, the district court correctly ruled that Hunkins, claim was premature. Whether a zoning regulation has gone too far cannot be measured

> until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question.

Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 191, 105 S. Ct. 3108, 3119 (1985). The United States Supreme Court has clearly established this finality requirement, noting that the Court's cases

> "uniformly reflect an insistence on knowing the nature and

> extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it."

Lucas v. South Carolina Coastal Council, ___ U.S.___,__112 S. Ct. 2886, 2891 (1992) (quoting MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340, 351, ____ S. Ct.____ (1986)).

This court has also dealt with the finality requirement. Citing Williamson and MacDonald, this court found that

> [e]conomic impact and interference with expectation interests cannot be evaluated until after a final application of the regulations to the land in question.

Thompson v. City of Red Wing, 455 N.W.2d 512, 516 (Minn. App. 1990), pet. for rev. denied (Minn. June 26, 1990).

In addition, a "takings claim is not ripe when the landowners have not submitted a development plan.,, Thompson, 455 N.W.2d at 516 (citing Agins v. City of Tiburon, 447 U.S. 255, 260, 100 S. Ct. 2138, 2141 (1980)). Moreover, a landowner's takings claim is not ripe even "where only one plan is rejected and no other plan is proposed." Id. (citing Penn Central Transo. Co. v. City of New York, 438 U.S. 104, 136-37, 98 S. Ct. 2646, 2665-66 (1978)).

Now, six years after the City enacted the zoning ordinances and two years after the property forfeited to the state, Hunkins attempts to draw a causal link between the zoning restrictions and the demise of his development. He contends that the City's actions, in conjunction with the MCDA and the MTCC, constituted a final determination and that requesting a variance or special use permit would have been futile. As authority for this defense, Hunkins cites the Minnesota Supreme Court's holding that "administrative remedies need not be pursued if it would be futile to do so." McShane v. City of Faribault, 292 N.W.2d 253, 256 (Minn. 1980).

But Hunkins' reliance on McShane is misplaced. There, the supreme court ruled that the McShanes were not first required to exhaust their administrative remedies by requesting a variance or a permit because under their particular circumstances, "a variance would neither be adequate nor appropriate relief." Id. Unlike Hunkins, the McShanes wanted to sell their property, rather than to develop it. Id. Therefore, they had no development plan

> upon which to base a request for a variance. [Alction on a request for a variance would have to wait until [the McShanes] could sell their property to a buyer with specific plans for it, and the marketability of the property would almost certainly be decreased because of the uncertainty. As a result, [the McShanes] are affected to their detriment by the zoning regulations even if a variance ultimately is granted.

Id. The supreme court also questioned the propriety of a variance for the McShanes allowing commercial use of the property upon its sale, noting that a variance "would be virtually impossible * * * without undermining the safety goals of the [airport zoning] regulations." Id.

In this case, such considerations do not play a role. More importantly, as developer of the property, Hunkins might easily have submitted development plans upon which the zoning board could have reached a final determination. But Hunkins never tested the City's commitment to its zoning regulations. Although he now contends the city "knew" the scope of his development plans, the law is clear that an actual plan must be submitted. Thompson, 455 N.W.2d at 516; see also McShane, 292 N.W.2d at 256 (zoning board needs "to consider specific plans") . Moreover, the record reflects that the City granted a

variance to a property owner operating a liquor store within the Technology Corridor; it might have done the same for Hunkins had he submitted a plan showing that his contemplated use of the property was compatible with the City's plan.(1)

> We agree, therefore, with the district court's holding that merely because plaintiffs feel they have been ignored and the zoning decision ran adverse to their stated desires * * * does not mean that seeking a final determination or a variance [was] futile.

---

(1)The district court noted that where a government acts as an enterprise, a compensable taking occurs if the property owner demonstrates that the government's regulation has caused a substantial diminution in the property's market value. Where a government acts as an arbitrator, a compensable taking occurs only if the government's decision results in the landowner losing all reasonable use of the property. Thompson v. City of Red Wing, 455 N.W.2d 512, 517 (Minn. App. 1990) (citing McShane v. City of Faribault, 292 N.W.2d 253, 258-59 (Minn. 1980)).

At trial and in this appeal, Hunkins correctly argued that, under these facts, the City acted in an enterprise capacity. Hunkins also contended that the City's down-zoning substantially diminished his property's market value. But neither of these contentions has any bearing on the district court's decision.

We further note that the purpose of the finality requirement is to force the decisionmaker to arrive at "a definitive position on

the issue that inflicts an actual, concrete injury." Williamson, 473 U.S. at 193, 105 S. Ct. at 3120.

DECISION

That Hunkins never obtained a final determination was undisputed. Therefore, the district court properly granted summary judgment.

Affirmed.

Judge Jack Davies
November 17, 1993